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- 1 at their January 31, 1994 meeting.
- 2 Q. Who wrote on this letter, if you know?
- 3 THE WITNESS: What I just repeated?
- 4 MR. RUSSELL: Yes.
- 5 A. That was circled and written by Peter Boyer who was
- 6 the Town Administrator.
- 7 Q. Did you receive this back from Mr. Owen with that
- 8 handwriting on it?
- 9 A. Yes.
- 10 MR. SKRIP: From whom, Mr. Owen or
- 11 Mr. Boyer?
- 12 MR. RUSSELL: Mr. Boyer.
- 13 Q. Did you understand my question to mean Mr. Boyer?
- 14 A. Repeat?
- 15 Q. Did you understand my question to mean Mr. Boyer,
- 16 that you received this document back from Mr. Boyer?
- 17 A. Yes, I did.
- 18 Q. On Exhibit 3, Mr. Owen, your name is indicated
- 19 followed by P.E., can you tell me what the P.E.
- 20 means?
- 21 A. Professional Engineer.
- 22 Q. For how long have you had that designation?
- 23 A. A long time. I can't recall.
- 24 Q. Is there an educational requirement that corresponds

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- 1 A. A lot of work.
- 2 Q. Returning to Exhibit Number 4, which has been
- 3 marked. As you read that today, do you see anything
- 4 about that letter that you would characterize as
- 5 inaccurate?
- 6 A. No.
- 7 (EXHIBIT 5 MARKED FOR IDENTIFICATION)
- 8 Q. Mr. Owen, the court reporter has marked the next
- 9 document as Exhibit Number 5. This is a document
- 10 dated February 01, 1994 under the signature William
- 11 B. Owen, Director. I'd ask you to take a look at
- 12 that and let me know if you're familiar with that
- 13 document?
- 14 A. (Witness perusing document) Yes.
- 15 Q. The third paragraph of that letter states, "Please
- 16 contact me and I will furnish you any existing
- 17 information you may need to proceed with this
- 18 project." And I'd ask you if you recall that you
- 19 furnished any information, I'll say, to Mr. Greenberg
- 20 since the letter is addressed to him?
- 21 A. What was the question again?
- 22 Q. This letter is addressed to Mr. Greenberg?
- 23 A. Yes.
- 24 Q. And the third paragraph states, "Please contact me

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- 1 to the designation P.E.?
- 2 A. There are requirements to obtain a P.E., which is
- 3 graduation from an accredited school, a college of
- 4 the particular engineering branch and four years'
- 5 experience following your graduation. And I'm also
- 6 registered in four other states other than
- 7 Massachusetts.
- 8 Q. As a Professional --
- 9 A. As a Professional Engineer.
- 10 Q. Do you have any other designation?
- 11 A. No.
- 12 MR. SKRIP: Can we take a two-second break?
- 13 MR. RUSSELL: Absolutely.
- 14 (BRIEF RECESS)
- 15 MR. RUSSELL: Back on.
- 16 Q. Mr. Owen, just following up on your recent answers
- 17 about your educational background. Can you tell me
- 18 when you completed the educational requirements to
- 19 obtain the designation P.E., roughly?
- 20 A. 1957.
- 21 Q. Have you had any further formal education other than
- 22 seminars --
- 23 A. No.
- 24 Q. -- since then? A lot of work experience?

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- 1 and I will furnish you any existing information you
- 2 may need to proceed with this project." And the
- 3 question is, do you recall that you actually provided
- 4 Mr. Greenberg with any information?
- 5 A. Yes.
- 6 Q. And when did you provide Mr. Greenberg with
- 7 information?
- 8 A. I don't know the exact date. It was following the
- 9 date on this letter, though.
- 10 Q. What information did you furnish Mr. Greenberg?
- 11 A. Primarily, the existing -- the plans of the existing
- 12 facility that was built in 1967, lists of our
- 13 equipment and personnel at the time.
- 14 Q. Anything else?
- 15 A. I can't recall.
- 16 Q. Do you think there might have been anything else?
- 17 A. There could have been.
- 18 Q. Like what?
- 19 MR. BARKER: Objection.
- 20 A. I don't know.
- 21 Q. And you indicated previously this equipment list
- 22 still exists that you provided Mr. Greenberg?
- 23 A. Yes.
- 24 Q. Have you seen that recently?

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- 1 A. I don't know if I've seen it recently.  
 2 Q. Do you have any idea when the last time you might  
 3 have seen it was?  
 4 A. I can't recall.  
 5 Q. In the last three years?  
 6 A. Three years? It could be.  
 7 Q. Do you know why you would have looked at it in the  
 8 past three years?  
 9 A. Well, the list was updated for our final project;  
 10 that's probably when I looked at it.  
 11 Q. Do you remember how much updating was necessary?  
 12 A. Well, to provide -- well, to list any new equipment  
 13 we may have purchased.  
 14 Q. Do you recall if you identified new equipment?  
 15 A. It wasn't specifically identified as new equipment.  
 16 It was just an equipment and vehicle list.  
 17 Q. Do you recall if you identified any additional  
 18 equipment other than what was on this list that you  
 19 provided Mr. Greenberg?  
 20 A. No.  
 21 Q. You don't recall or it didn't?  
 22 A. No, we didn't. I didn't differentiate between the  
 23 two lists.  
 24 Q. Well, did the list change at all? I guess that's my

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- 1 Mr. Greenberg with any information and you identified  
 2 some information that you provided. Did you provide  
 3 any information regarding this project to anybody  
 4 other than Mr. Greenberg, and I'll limit that to the  
 5 project, meaning preparing preliminary architectural  
 6 plans and all the other items identified on Exhibit  
 7 Number 2?  
 8 A. Prior to the award or after the award?  
 9 Q. At the time that you gave Mr. Greenberg the equipment  
 10 list, the personnel list, did you actually give him  
 11 the existing plans or make them available for him to  
 12 look at?  
 13 A. We made them available.  
 14 Q. At the time that you did all of that, did you provide  
 15 any other information to anybody else about this  
 16 project; that's all I'm getting at?  
 17 A. No.  
 18 Q. So, all the information that the Town provided  
 19 relevant to this project would have been what you  
 20 gave to Mr. Greenberg that we discussed?  
 21 A. That's correct.  
 22 Q. When I say "this project," I'm talking about  
 23 Exhibit 2, the Request for Proposals and the Scope of  
 24 Services --

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- 1 question.  
 2 A. Was there a change?  
 3 Q. Did the equipment list change at all?  
 4 A. Yes, it did.  
 5 Q. How did it change?  
 6 A. Well, some added equipment.  
 7 Q. Do you recall generally what equipment was added?  
 8 A. I really don't recall. I know one -- it was  
 9 equipment we had in place that I wanted to put in  
 10 this facility during the winter months, that it's  
 11 currently left outside at the sewer plant.  
 12 Q. That's the only item that you can recall?  
 13 A. Well, that I can recall, yes.  
 14 Q. There was no new equipment purchases that have been  
 15 identified on the list?  
 16 A. There probably was.  
 17 Q. You don't recall what those were?  
 18 A. I don't recall numbers.  
 19 Q. As you look at this document today, do you notice  
 20 anything that's inaccurate about this document?  
 21 A. No.  
 22 (EXHIBIT 6 MARKED FOR IDENTIFICATION)  
 23 Q. Mr. Owen, in response to -- strike that. I asked you  
 24 with respect to Exhibit Number 5 whether you provided

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- 1 A. Yes.  
 2 Q. -- from the 1993/1994 time frame?  
 3 A. Yes.  
 4 Q. Mr. Owen, the next document that's been marked for  
 5 identification, Exhibit 6. It's entitled, "Defendant  
 6 Town of Falmouth's Responses to Plaintiff's First Set  
 7 of Interrogatories." I'm just going to ask you if  
 8 you recognize this document?  
 9 A. (Witness perusing document) Yes.  
 10 Q. Is that your signature that appears on the last page?  
 11 A. Yes.  
 12 Q. I'm going to direct your attention to Response Number  
 13 2 and I'm just going to ask you to expand upon this  
 14 answer a little bit. The response says, "Upon  
 15 information and belief, plaintiff met with me to  
 16 discuss the creation of the preliminary plans for  
 17 renovations to Falmouth's Public Works Maintenance  
 18 Facility. Plaintiff then created those plans for  
 19 renovations to Falmouth Public Works Maintenance  
 20 Facility." I'm going to ask you if you can tell me  
 21 what was discussed during these meetings that you  
 22 reference in Response Number 2?  
 23 A. Well, I met with the plaintiff more than once. I  
 24 can't recall exactly what was discussed, but I



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1 related to him my ideas on what I was looking for  
 2 with this new facility.  
 3 Q. And what were those ideas?  
 4 A. Added offices -- or not added, new offices, new  
 5 lunchroom, more vehicle and equipment storage, an  
 6 indoor wash bay, amongst other things.  
 7 Q. Did you tell him where any of these items should be  
 8 located?  
 9 A. I didn't specifically tell him where they should be  
 10 located, because the site pretty much dictates that.  
 11 Offices in the front, storage in the back.  
 12 Q. Did you discuss that with him?  
 13 A. I believe I did.  
 14 Q. Before the plans were created?  
 15 A. Before?  
 16 Q. Before any plans were created?  
 17 A. Well, they were in the process of being created, I  
 18 would say.  
 19 Q. What do you recall about that discussion?  
 20 A. I don't understand your question.  
 21 Q. Well, you said you recall discussing with him that  
 22 the offices should be in the front and the vehicle  
 23 storage in the back, what do you recall specifically  
 24 about the context in which that discussion took

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1 I think there was an overlap. It's an objection to  
 2 the form. So, in other words, I think he said he did  
 3 instruct him as to some aspect of the design; and  
 4 then your question was, did he instruct him as to  
 5 anything else about the design and he said no.  
 6 Q. The second sentence of Response Number 2 says,  
 7 "Plaintiff then created those plans for renovations  
 8 to Falmouth's Public Works Maintenance Facility." Do  
 9 you recall discussing the plans that were created by  
 10 Mr. Greenberg with Mr. Greenberg?  
 11 A. Well, he created the plans. That was the end of the  
 12 project.  
 13 Q. Did you have any discussion with him about the  
 14 plans?  
 15 A. Well, yes. We had discussions as they were being  
 16 developed.  
 17 Q. After they were created?  
 18 A. No. No. I don't recall.  
 19 Q. Did you discuss with him how you or the Town intended  
 20 to use those plans?  
 21 A. No.  
 22 Q. Do you recall that you discussed the plans with  
 23 anybody else at the Town?  
 24 A. Well, like I said earlier, they were presented to the

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1 place?  
 2 A. Well, there were several meetings that I had with  
 3 Mr. Greenberg.  
 4 Q. How did that subject come up, the subject of  
 5 placement of offices and storage?  
 6 A. I don't know how it really came up. It was part of  
 7 the project. For him to determine and for me to  
 8 instruct him where I wanted these building components  
 9 placed.  
 10 Q. And so, did you instruct him that the offices should  
 11 go in the front --  
 12 A. Absolutely.  
 13 Q. -- and the storage should go in the back?  
 14 A. That's correct.  
 15 Q. Did you give him any instructions about how those  
 16 items should be designed? How the office should be  
 17 designed or how the vehicle storage should be  
 18 designed?  
 19 MR. BARKER: Objection.  
 20 A. No. I left it up to him.  
 21 MR. RUSSELL: What's the objection?  
 22 MR. BARKER: I think you said something  
 23 about instructed him, and then your question was did  
 24 he instruct him about how they should be designed and

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1 Board of Selectmen.  
 2 Q. So, you discussed them in front of the Board of  
 3 Selectmen?  
 4 A. Correct.  
 5 Q. Do you recall either before presenting them to the  
 6 Board of Selectmen or after presenting them to the  
 7 Board of Selectmen, that you discussed them with  
 8 anybody else in the Town?  
 9 A. Well, with my Department heads that would be housed  
 10 in this facility.  
 11 Q. What do you recall about those conversations?  
 12 A. I can't recall.  
 13 Q. Any recollection at all?  
 14 A. Other than, you know, we looked at the plans in  
 15 general. They saw where their offices were going to  
 16 be, added vehicle storage; that was it.  
 17 Q. When you presented the plans to the Selectmen, did  
 18 you comment on them?  
 19 A. I'm sure I did, but I don't know what comments I made  
 20 at the meeting.  
 21 Q. Did you characterize them as favorable or  
 22 unfavorable? Were you attempting to have the project  
 23 proceed when you presented the plans to the  
 24 Selectmen?

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- 1 A. Well, I considered them favorable because they were  
 2 presented to the Selectmen. We paid the final bill.  
 3 If they were unfavorable, I wouldn't have paid the  
 4 bill.  
 5 Q. When you presented them to the Selectmen, rather than  
 6 me trying to guess what your intent was, could you  
 7 tell me what your intent was in presenting them to  
 8 the Selectmen?  
 9 A. My intent was to let them know the magnitude of the  
 10 project dollarwise, that's what they're mainly  
 11 interested in.  
 12 Q. Did they ask you if you supported the project?  
 13 A. I supported the project prior to when the plaintiff  
 14 developed the plans.  
 15 Q. Did they ask you if you supported the project as  
 16 reflected on the plans that you had presented, or was  
 17 that just assumed because you wouldn't have presented  
 18 them unless you wanted the project to proceed  
 19 according to the plans?  
 20 MR. BARKER: Objection.  
 21 A. I made the presentation. I supported the project.  
 22 Q. Do you recall when that was, when you presented them  
 23 to the Selectmen?  
 24 A. I believe it's in one of the earlier exhibits,

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- 1 the offices are. Do you recall any comments about  
 2 the plans as they were shown to the Department heads?  
 3 A. I can't recall.  
 4 Q. Do you recall any discussion about the plans at the  
 5 time that they were being shown to the Department  
 6 heads?  
 7 A. I can't recall any. They were shown the plans and  
 8 they reacted favorably just to get a new facility.  
 9 Q. Did anybody comment that some changes might be  
 10 appropriate?  
 11 A. No, I don't think so. I can't recall at the time.  
 12 Q. I understand, it was a number of years ago. I'm just  
 13 asking for your best recollection. Do you know of  
 14 anybody else at the Town that was provided with the  
 15 plans commented on the plans?  
 16 A. I don't believe so.  
 17 Q. Earlier, I asked you about what information was  
 18 provided to Mr. Greenberg in trying to accomplish  
 19 this project and whether any information was provided  
 20 to anybody other than Mr. Greenberg. I'm fearful  
 21 that I'm falling into the trap of referring to you as  
 22 the Town, but really, I'm trying to learn what the  
 23 Town did with respect to this project. I know you  
 24 were responsible for a lot of that, but I hope that

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- 1 January '94.  
 2 Q. Do you believe you had a budget in January of '94?  
 3 A. No, no. No budget.  
 4 Q. Do you think you had the plans in January of '94?  
 5 A. Wait a minute. Well, this was for the award to  
 6 Greenberg. Repeat your question, please?  
 7 Q. You know, I asked you if you discussed the plans  
 8 with anybody other than Mr. Greenberg and you said  
 9 Department heads and the Selectmen. I'm trying to  
 10 narrow down the time period, when this presentation  
 11 to the Selectmen took place?  
 12 A. I can't recall.  
 13 Q. Even a year, if you could?  
 14 A. I can't recall.  
 15 Q. Other than discussing the plans with the Department  
 16 heads and the Selectmen, do you recall any other  
 17 discussions about the plans, I'll say, until May of  
 18 2001?  
 19 A. It may have been discussed with the local paper;  
 20 that's news.  
 21 Q. Sure. Any other discussions?  
 22 A. I can't recall.  
 23 Q. And your discussions with the Department heads so  
 24 far, I think what you said, is you showed them where

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- 1 in answering these questions, if I refer to you, but  
 2 you're familiar with information that somebody at the  
 3 Town did that might be responsive to my question,  
 4 that you'll keep that in mind and try to make me  
 5 aware of that; is that fair?  
 6 A. Okay.  
 7 Q. Thank you.  
 8 (EXHIBIT 7 MARKED FOR IDENTIFICATION)  
 9 Q. Mr. Owen, I present to you what's been marked as  
 10 Exhibit Number 7 and ask you if you're familiar with  
 11 that document.  
 12 A. (Witness perusing document) Yes, I am. It's  
 13 addressed to me.  
 14 Q. This is a letter dated August 5, 1994 under the  
 15 signature of Noah Greenberg, AIA and addressed to a  
 16 Mr. William B. Owen. And I guess my question is, do  
 17 you have any specific recollection of having received  
 18 that letter?  
 19 A. I don't really have a specific recollection, but I'm  
 20 sure I did.  
 21 Q. Do you recall when you took any action in response to  
 22 that letter?  
 23 A. I think following this we completed our review.  
 24 Q. The letter indicates that some schematic design

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- 1 drawings were delivered on March 15th, 1994. Do you  
 2 have a recollection of that?  
 3 A. I don't recall the exact date, but it could be.  
 4 Q. The letter is dated August 5th, 1994. Is there any  
 5 reason why there would be almost a four-month delay  
 6 in responding to the schematic designs that have been  
 7 presented in March, other than, you know, just being  
 8 generally busy with other work?  
 9 A. Well, one of the reasons is we were into our  
 10 construction season, which takes a lot of my time,  
 11 road work, drainage, sidewalk contracts. In March  
 12 we're into getting into April, Town meetings.  
 13 MR. BARKER: Can I ask you on Exhibit 7 --  
 14 I don't see the word "schematic." Am I missing  
 15 something?  
 16 MR. RUSSELL: No. I was reading into it.  
 17 You're right. It just says "preliminary design  
 18 drawings." I wasn't trying to add anything. Maybe I  
 19 saw the word "scheme" and that set me off into  
 20 schematic, but it's not relevant to any of the  
 21 questions.  
 22 Q. Summer is your busy season; is that construction  
 23 season?  
 24 A. Yes.

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- 1 this site.  
 2 Q. What is the water maintenance facility? What is it?  
 3 A. It's a garage where the Water Department is housed  
 4 and it's separate from this facility. It's on Palmer  
 5 Avenue.  
 6 Q. How would somebody create a document that would  
 7 "locate the water maintenance facility here," as your  
 8 notes reflect? Is it just a matter of drawing on a  
 9 piece of paper and writing "Water Department," or is  
 10 there more to it?  
 11 A. No, there's more to it. Primarily, to see if the  
 12 amount of equipment and personnel could fit into the  
 13 site that we had and it was determined it wasn't  
 14 feasible.  
 15 Q. Who made that determination?  
 16 A. Myself.  
 17 Q. How did you come to that determination?  
 18 A. Knowing the amount of equipment they have, the amount  
 19 of people. They required more room because they have  
 20 a water meter testing facility at their Palmer Avenue  
 21 site. It's also the site of the Long Pond main  
 22 pumping station, so we'd really be splitting Water  
 23 Department personnel and it was decided not to put  
 24 them down here.

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- 1 (EXHIBIT 8 MARKED FOR IDENTIFICATION)  
 2 Q. Mr. Owen, I'm showing to you what the court reporter  
 3 has marked as Exhibit Number 8 and I'd ask you to  
 4 look at that document and let me know if you  
 5 recognize that document.  
 6 A. (Witness perusing document) Yes.  
 7 Q. And what do you recognize the document to be?  
 8 A. Comments on preliminary plans for the DPW shop dated  
 9 August 24th, 1994 written by myself.  
 10 Q. This is your handwriting?  
 11 A. Yes.  
 12 Q. And it's safe to assume that there were some  
 13 preliminary plans that you reviewed in making these  
 14 comments?  
 15 A. Uh-huh. Yes.  
 16 Q. Did you have any help in reviewing those plans?  
 17 A. I would say no.  
 18 Q. Did anybody else review them with you?  
 19 A. No.  
 20 Q. To the extent that you can remember, can you just  
 21 explain to me what each of these items mean? The  
 22 first one says, "locate water maintenance facility  
 23 here," can you tell me what that means?  
 24 A. I was trying to centralize our Water Department at

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- 1 Q. When did you make that decision?  
 2 A. I'm not sure when. Sometime after this date.  
 3 Q. Do you think it was shortly after this date?  
 4 A. I don't recall.  
 5 Q. The next item says, "Centralize offices," can you  
 6 tell me what that means?  
 7 A. I don't recall what the first plan I had from Noah  
 8 Greenberg looked like, other than my comment was to  
 9 keep the offices all in one area.  
 10 Q. Do those plans that you were commenting on still  
 11 exist, to your knowledge? These plans that you were  
 12 commenting on, do they still exist?  
 13 A. I can't recall. They may, but I'm not sure.  
 14 Q. Did you discuss these notes with anybody?  
 15 A. They were discussed with Noah Greenberg.  
 16 Q. And we know that the water maintenance facility  
 17 wasn't relocated to be reflected on these plans,  
 18 correct?  
 19 A. No. That's correct.  
 20 Q. Were any of these other items on this document  
 21 reflected on a revised set of plans?  
 22 A. I can't really recall other than the conference room,  
 23 I guess, was eliminated. I made a note after that.  
 24 We didn't consider the wood burning boiler.

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- 1 Q. You did or you didn't?
- 2 A. Did not.
- 3 Q. Who made that decision?
- 4 A. Myself and DEP, the Department of Environmental
- 5 Protection.
- 6 Q. Why were they involved?
- 7 A. Well, there was a regulation. If you put a wood
- 8 burning boiler in a facility, there are certain times
- 9 of the year you cannot use it or you cannot burn. I
- 10 don't recall the times of the year, but that was the
- 11 main consideration.
- 12 (EXHIBIT 9 MARKED FOR IDENTIFICATION)
- 13 Q. The last item on Exhibit 8 says, "Wash bay/steam
- 14 cleaning bay."
- 15 A. Uh-huh.
- 16 Q. Can you explain what that means?
- 17 A. Well, this was to provide an indoor wash facility for
- 18 trucks and equipment. And when I said "separate," I
- 19 meant a separate area for this wash bay.
- 20 Q. So, you think it was there and it just needed to be
- 21 separated, or it wasn't there and just needed to be
- 22 added in a separate location?
- 23 A. I can't recall if it was there. It might have been
- 24 there as part of an overall open area.

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- 1 Q. Mr. Owen, the next document has been marked as
- 2 Exhibit Number 9 and it's a document that's headed,
- 3 "Robert Charles Group of 411 Waquoit Highway,
- 4 Falmouth, MA 02536." It's dated August 25, 1994 and
- 5 I just ask you if you're familiar with that document?
- 6 A. (Witness perusing document) Yes.
- 7 Q. How are you familiar with it?
- 8 A. Well, I don't understand your question how I am
- 9 familiar with it?
- 10 Q. Well, have you seen it before?
- 11 A. Yes.
- 12 Q. Do you recall the circumstances that you saw this
- 13 document before?
- 14 A. Well, this was a meeting held in my office between
- 15 the parties listed here.
- 16 Q. And it's signed by Mr. Greenberg, do you see that?
- 17 A. Yes.
- 18 Q. Do you have an understanding of what the intent of
- 19 this document was, or what the purpose of this
- 20 document was?
- 21 A. Well, these are items we discussed at this meeting,
- 22 to give the architect a general plan to follow in
- 23 preparation of his plans.
- 24 Q. Is it safe to assume at this meeting, on August 25th,

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- 1 1994, that you discussed the items that are reflected
- 2 on what's been marked as Exhibit Number 8?
- 3 A. Yes.
- 4 Q. Do you recall that Mr. Greenberg was present at that
- 5 meeting?
- 6 A. Yes.
- 7 Q. And you would have received this sometime after that,
- 8 sometime after August 25th, 1994?
- 9 A. Yes.
- 10 Q. Did you respond to this document in any way after
- 11 you received it?
- 12 A. I can't recall if I responded in writing or not, or
- 13 in -- I'm sure it was discussed at a later date.
- 14 Q. Do you recall reviewing it when you received it to
- 15 confirm whether it was accurate?
- 16 THE WITNESS: Reviewing the document from
- 17 Noah Greenberg?
- 18 MR. RUSSELL: This document, Number 9.
- 19 A. Yes, I reviewed it.
- 20 Q. But you don't remember that you responded to it at
- 21 all?
- 22 A. No.
- 23 Q. You don't have any recollection of thinking any of
- 24 these items were inaccurate, or incorrect, or

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- 1 misstated?
- 2 A. No.
- 3 (EXHIBIT 10 MARKED FOR IDENTIFICATION)
- 4 Q. Mr. Owen, I've presented to you what's been marked as
- 5 Exhibit Number 10. It's a document on Noah Greenberg
- 6 Associates Architects letterhead dated August 26th,
- 7 1998 and I ask you if you're familiar with that
- 8 document?
- 9 A. (Witness perusing document) Yes.
- 10 Q. How are you familiar with it?
- 11 A. This was the preliminary cost estimate for the
- 12 project at that time.
- 13 Q. It's dated 1998. Is it your recollection, that this
- 14 was prepared in 1998?
- 15 A. I assume so.
- 16 Q. Is there any reason why there would have been a
- 17 four-year delay between -- almost exactly a four-year
- 18 delay between this meeting on August 25th, 1994, when
- 19 you discussed the preliminary plans, and this cost
- 20 estimate of August 26th, 1998?
- 21 A. I don't really recall, but I believe at first we did
- 22 not have a project cost estimate at the conclusion of
- 23 the preliminary plans.
- 24 Q. What's your understanding of when they were



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1 concluded, the preliminary plans?  
 2 A. I can't recall.  
 3 Q. And at some point did you request a cost estimate?  
 4 A. Pardon me?  
 5 Q. Did you request a cost estimate at some point?  
 6 A. That was part of the project.  
 7 Q. In 1998, did you request a cost estimate, or did you  
 8 just wait four years for it to show up?  
 9 MR. BARKER: Objection.  
 10 A. I don't know the four-year time -- I can't explain  
 11 the four-year time frame other than I don't think we  
 12 had this at the conclusion of Noah Greenberg's work.  
 13 Q. You didn't have this particular document, or you  
 14 didn't have any cost estimate?  
 15 A. We may have had it. I can't recall if we had a cost  
 16 estimate at that time.  
 17 Q. Do you recall any discussion in August of 1998 with  
 18 Mr. Greenberg regarding preparation of a current cost  
 19 estimate?  
 20 A. I can't recall.  
 21 Q. You don't have any recollection at all?  
 22 A. No.  
 23 Q. Do you recall receiving this document?  
 24 A. Yes. I must have received it because it's in my

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1 files.  
 2 Q. Did you respond to Mr. Greenberg at all after you  
 3 received this?  
 4 A. I can't recall.  
 5 Q. So, you don't recall discussing it with Mr. Greenberg  
 6 at all, either?  
 7 A. I'm sure we had a discussion somewhere along the  
 8 line. I don't know if it was prior to his writing  
 9 this memorandum to me, or after.  
 10 Q. Do you recall the substance of the discussion at  
 11 all?  
 12 A. I can't recall.  
 13 Q. Does the figure look familiar to you, the final  
 14 figure at the bottom, 2 million?  
 15 A. 2.8 million. Yes, it looks familiar.  
 16 Q. Earlier you mentioned you went to the Selectmen and  
 17 you had a figure of 2.2 million?  
 18 A. I think that was before some of the other items were  
 19 added in. That was based on a very preliminary.  
 20 Q. So, that would have been a different cost estimate?  
 21 A. That's correct.  
 22 Q. Do you know who would have prepared that cost  
 23 estimate?  
 24 A. I can't recall, but I'm sure it was Mr. Greenberg.

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1 Q. And that was the figure that was presented to the  
 2 Selectmen with the plans that he had prepared, the  
 3 2.2 million?  
 4 A. Correct.  
 5 Q. Which is different than this document, Exhibit  
 6 Number 10?  
 7 A. Correct.  
 8 Q. One of the reasons I ask is there's a new  
 9 construction cost of roughly 2.2 million, and I was  
 10 curious if that was the same 2.2 million you were  
 11 referring to?  
 12 A. It could have been, and then we added these site  
 13 improvements, contingencies, architect's fees.  
 14 Q. But your recollection is, when you went to the  
 15 Selectmen, the figure was 2.2 million?  
 16 MR. BARKER: Objection.  
 17 A. It was 2.2 million, that I recall.  
 18 Q. And it didn't include these extra items?  
 19 A. Apparently not.  
 20 Q. Do you know who identified these extra items? I'm  
 21 going to refer to everything under new construction  
 22 as an extra item.  
 23 A. Well, I probably identified some, because I don't  
 24 believe they were included in the initial estimate.

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1 Q. Did you have any discussion with Mr. Greenberg about  
 2 the larger renovation project in 1998?  
 3 MR. BARKER: Objection.  
 4 A. No. The project pretty much stayed the same, the  
 5 scope.  
 6 Q. And what do you mean by that?  
 7 A. Well, offices and garage.  
 8 (EXHIBIT 11 MARKED FOR IDENTIFICATION)  
 9 Q. Mr. Owen, I'm showing you what's been marked as  
 10 Exhibit Number 11, it's a document on the letterhead  
 11 of Noah Greenberg Associates Architects and it's  
 12 dated August 26, 1998. I ask you if you're familiar  
 13 with that document?  
 14 A. (Witness perusing document) Yes. It's a bill from  
 15 Greenberg.  
 16 Q. And there are initials, WBO are in the middle of the  
 17 page. Are those your initials?  
 18 A. Yes.  
 19 Q. And there's some handwriting, there's actually a  
 20 stamp and some handwriting in the area of the stamp.  
 21 Do you have an understanding of what that information  
 22 is?  
 23 A. Yes.  
 24 Q. And what is that information?

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- 1 A. It identifies the article the Town meeting approved  
2 the money for, the account number it's paid out of,  
3 and the amount.  
4 Q. And whose handwriting is that?  
5 A. Pardon me?  
6 Q. Whose handwriting is that?  
7 A. That's mine.  
8 Q. Do you recall in 1998 that you received from  
9 Mr. Greenberg anything other than this bill and this  
10 cost estimate that's been marked as Exhibit Number  
11 10?  
12 A. I'm not sure about '98. There were more funds or  
13 more monies due other than the 4,000. There might  
14 have been a bill after this or a bill before it. I  
15 can't recall.  
16 Q. And when you say --  
17 A. This may be the final bill.  
18 Q. The document has an area identified as "Phase," and  
19 that says, "Completion of preliminary design phase,  
20 preparation of preliminary cost estimates." Was it  
21 your understanding that both of these items had been  
22 satisfactorily completed at that time?  
23 A. Apparently, yes.  
24 Q. Did you think that this bill was part of the \$7,800

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- 1 Q. Am I mistaken about that?  
2 A. I identified the additional items and I also wanted  
3 Mr. Greenberg to include a contingency figure.  
4 Architect fees, percentages were left to him.  
5 Q. Why were the percentages left to him?  
6 A. Because he's the architect.  
7 (EXHIBIT 12 MARKED FOR IDENTIFICATION)  
8 Q. Mr. Owen, marked as Exhibit 12 is a six-page  
9 document that is on Department of Public Works  
10 stationery and has the heading, "Town of Falmouth,  
11 Department of Public Works, Request for  
12 Qualifications of Architectural Design Services." I  
13 ask you to take your time and look at that, review  
14 that document.  
15 A. (Witness perusing document) Yes, I'm familiar with  
16 it.  
17 Q. And how are you familiar with it?  
18 A. I basically prepared this.  
19 Q. When you say "basically," what do you mean by that?  
20 A. Well, I had -- I consult with my Town Engineer and  
21 with our Town Planner when we are going out for large  
22 projects. I also reviewed some other proposals other  
23 communities put out for the same type of project.  
24 Q. You were responsible for the actual drafting of the

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- 1 that was identified on one of the earlier exhibits as  
2 the fee for the services on this project?  
3 A. Yes.  
4 Q. That would be Exhibit Number 5. Exhibit Number 10,  
5 the cost estimate, do you recall discussing that with  
6 anybody at the Town?  
7 A. I'm sure it was discussed somewhere along the line,  
8 but I can't recall when. It was probably discussed  
9 with the Selectmen at a later date, or the Town  
10 Administrator.  
11 Q. You don't recall any of those discussions, however?  
12 A. No.  
13 Q. And Exhibit 10, the final item says, "Architect and  
14 engineering fees at 10 percent"?  
15 A. Yes.  
16 Q. Is that an item that you added?  
17 A. No, I didn't add that.  
18 Q. Well, you indicated that this estimate includes  
19 the original construction and then some additional  
20 items?  
21 A. That's correct.  
22 Q. I thought your testimony was that you indicated that  
23 you identified the additional items?  
24 MR. BARKER: Objection.

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- 1 document?  
2 A. Yes.  
3 Q. When did you obtain these requests for other projects  
4 that you just mentioned? And if I didn't --  
5 A. Where did I obtain them?  
6 Q. Yes. I think you said you reviewed some similar  
7 documents from other Town projects. And if I'm  
8 wrong, please correct me.  
9 A. Well, I did -- there were other towns for similar  
10 projects this size and you get this information by  
11 networking and meetings and so forth. So, you know,  
12 I asked what they had put in their proposals.  
13 Q. How did you make those requests?  
14 A. Most of the time by telephone.  
15 Q. And what was the purpose of this document?  
16 A. The purpose was to -- as it states, to get a Request  
17 for Qualifications for Design Services for our final  
18 design.  
19 Q. I'm going to ask you to look at the third page,  
20 which is actually Number 2 on the bottom, and I'm  
21 going to ask you about the paragraph beginning with,  
22 "The present facility is a concrete block structure,"  
23 do you see that?  
24 A. Okay. Under background?

DUNN &amp; GOUDREAU